

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEWARK, NEW JERSEY**

Plaintiff (s)

ELEANOR M. COONEY, As Executrix
of the Estate of Daniel T. Cooney, Jr.,
Deceased, and ELEANOR M. COONEY,
ELEANOR SCHIANO, HELEN E. COONEY
MUELLER, DANIEL T. COONEY, III and
ROBERT COONEY, individually,

DOCKET NO.: 04-CV-1272 (JLL)

vs.

Defendant (s)

ROBERT E. BOOTH, JR., M.D., ARTHUR R.
BARTOLOZZI, M.D., and 3B ORTHOPAEDICS,
P.C./PENN ORTHOPAEDICS and ROBERT E.
BOOTH, JR., M.D., ARTHUR R. BARTOLOZZI,
M.D., 3B ORHOPAEDICS, P.C./PENN
ORTHOPAEDICS, Personally.

CIVIL ACTION

**PLAINTIFFS' APPENDIX IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION.**

Helen E. Cooney Mueller (HCM 4226)
Attorney for Plaintiffs
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THIS IS NOT A BILL

Explanation of Your Medicare Part B Benefits


 DANIEL COONEY
 8 ERLI ST
 WAYNE NJ 07470-4303

Summary of this notice dated April 20, 1998

Total charges:	\$ 6,460.00
Total Medicare approved:	\$ 1,818.92
We paid your provider:	\$ 1,455.14
Your total responsibility:	\$ 363.78

Your Medicare number is: 058-07-6990A

Your provider accepted assignment

Details about this notice (See the back for more information.)

BILL SUBMITTED BY: Allegheny University Of Hlth
Mailing Address: The Orthopaedic Hosp
 Po Box 820447
 Phila PA 19182

<u>Date</u>	<u>Services and Service Codes</u>	<u>Charges</u>	<u>Medicare Approved</u>	<u>See Notes Below</u>
Feb 26, 1998	Control number 21-8079-077-12-00 Arthur Bartoloni M.D. 01 Total knee replacement [Z7447-GCLT]	\$ 6,460.00	\$ 1,818.92	a

Notes:

a This is the maximum approved under the Medicare fee schedule for this service.

IMPORTANT: If you have questions about this notice, call the Medicare Claims Processing Center at 1-800-744-6460, or visit us at 15180 Cedar Street, Carnegie Hill, PA 15106. If you contact us, please provide your Medicare number and the date of this notice. To appeal our decision, write to us at Medicare, P.O. Box 2040, Carnegie Hill, PA 15106-0413 before October 22, 1998. See #1 on the back.

ALLOS 3.30
Cincinnati Hospital

MRN	Visit ID	Admit Date	Disch Date	Proc Code	Proc Date	Proc Descr	Px Proc
791384	3634458	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
798998	3648151	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
				8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
799000	3648169	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65128 David Nazarian
				8154	02/26/1998	Total Knee Repl	65128 David Nazarian
799005	3648201	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65128 David Nazarian
				8154	02/26/1998	Total Knee Repl	65128 David Nazarian
790971	3648219	02/26/1998	03/02/1998	8151	02/26/1998	Total Hip Repl	65128 David Nazarian
798729	3648227	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
				8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
644895	3648235	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
798011	3648250	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
				8154	02/26/1998	Total Knee Repl	65120 Robert Booth
793986	3648268	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
799029	3648334	02/26/1998	03/02/1998	8151	02/26/1998	Total Hip Repl	65128 David Nazarian
799034	3648342	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65128 David Nazarian
				8154	02/26/1998	Total Knee Repl	65128 David Nazarian
456785	3648441	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
453847	3648508	02/26/1998	03/04/1998	8154	02/26/1998	Total Knee Repl	65128 David Nazarian
789565	3651841	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
				8154	02/26/1998	Total Knee Repl	65120 Robert Booth
789631	3651862	02/26/1998	03/01/1998	8155	02/26/1998	Revls Knee Repl	65120 Robert Booth
789584	3651890	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi
788632	3648185	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65120 Robert Booth
				8154	02/26/1998	Total Knee Repl	65120 Robert Booth
782873	3648144	02/26/1998	04/08/1998	8154	02/26/1998	Total Knee Repl	65122 Arthur Bartolozzi

***** 2000 MedQual Systems Inc. *****

Page 1

Attachment 112

Page 1 of 1

12 JUL 00 1420

TUTTLEMAN OPERATING ROOM SCHEDULE

FOR THURSDAY, FEB 26, 1998

OR TIME	PATIENT'S NAME	AGE	OPERATIONS SCHEDULED	W/	ANES	EQUIPMENT	COMMENTS
11 07:00	016- WILLIAMS, BRIAN	40	RT KNEE(S) SURGICAL ARTHROSCOPY	Baldwin, F.	GEN		
13:00	018- MASTER, CHRISTINA	31	LT KNEE(S) SURGICAL ARTHROSCOPY, ACL RECONST W/ ALLOGRAFT (8 LATERAL MENISCAL REP.)	Green, J.	GEN		
15:30	016- CIRIELLO, MICHAEL	30	R KNEE(S) SURGICAL ARTHROSCOPY, ACL RECONST W/ ALLOGRAFT	Green, J.	GEN		
12 07:30	018- GONDO, MICHAEL, JR.	52	RELEASE CAYTONS CANAL ANTERIOR TRANSPOSITION ULNAR NERVE AT ELBOW	Trager, S.	BLE		
09:30	015- BIPIANO, MICHAEL	41	OPEN LT ROTATOR CUFF REPAIR	Trager, S.	GEN		
11:00	015- SMELTON, JAMES W.	51	LT TRIGGER FINGER RELEASE (LONG & RING FINGERS)	Trager, S.	BLE		
13 07:00	018- KOSMALSKI, EDWARD R.	52	LT KNEE(S) SURGICAL ARTHROSCOPY	B/S/D/N	A/C		
08:00	018- DARTY, ROBERT J.	58	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
14 07:00	015- KATZ, ADA	79	RT TOTAL KNEE ARTHROPLASTY (18-PS)	B/S/D/N	A/C		
12:00	015- PHILLIPS, MARGARET	73	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
13 07:00	016- MARTIN, CHESTER W.	69	LT TOTAL HIP ARTHROPLASTY (TAPERLOC)	B/S/D/N	A/C		
09:00	018- COONEY, DANIEL	82	LY TOTAL KNEE ARTHROPLASTY (18-PS)	B/S/D/N	A/C		
12:00	015- BELTINGARD, KATHLEEN L	59	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
14:00	018- WEST, JOHN J	29	RT TOTAL HIP ARTHROPLASTY (TAPERLOC, S-S)	B/S/D/N	A/C		
14 07:00	015- DEANE, CHARLES C	67	LT TOTAL KNEE ARTHROPLASTY (18-PS)	B/S/D/N	A/C		
00:00	015- DONAHUE, MARGARET	79	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
12:00	015- KOZAK, MARY JEAN	59	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
17 07:00	015- WYLOSTETH, CECILIA	79	LT TOTAL KNEE ARTHROPLASTY (18-PS)	B/S/D/N	A/C		
09:00	018- WEGNER, PEARL J	77	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LY TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
13:00	015- ROMETSON, HELEN R	77	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		
18 07:00	015- REILLY, CATHERINE	69	LY TOTAL KNEE ARTHROPLASTY (18-PS)	B/S/D/N	A/C		
09:00	015- HERRITT, MARY KAY	57	RT TOTAL KNEE ARTHROPLASTY (18-PS, CCK)	B/S/D/N	A/C		
11:00	015- OLIPHANT, WILLIAM	61	REV RT TOTAL KNEE ARTHROPLASTY (CCK, LONG STEN, CELL SAVER)	B/S/D/N	A/C		
13:00	015- BUTTEL, WALTER J.	76	RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)	B/S/D/N	A/C		

TU

O'BRIEN & RYAN, LLP

ATTORNEYS AT LAW

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April 19, 2005

Via Facsimile and First Class Mail

Helen E. Cooney Mueller, Esquire
Cooney & Mueller
11 Susan Avenue
Wayne, New Jersey 07470

RE: Cooney v. Booth, M.D., et al.
Docket No.: C-04-1272 (JLL)
Our File No.: 55034

Dear Mrs. Cooney-Mueller:

Please allow this letter to confirm our telephone conversation of yesterday afternoon, April 18, 2005, during which you agreed to extend the time period for defendants to produce the face-sheets regarding defendants' insurance policies for the years 1998 and 2001-2005 until Wednesday, April 20, 2005. I expect to receive these documents tomorrow and I will immediately forward them to your attention upon my receipt of them.

As for your request for copies of the top portion of the intra-operative reports for all surgeries performed by Robert E. Booth, Jr., M.D. and Arthur R. Bartolozzi, M.D. on February 26, 1998, with personal identifying information redacted, please be advised that my clients are not in possession of any such documents. If these documents still exist, they are most likely in the possession and control of Graduate Hospital.

Finally, with respect to your request for "surgeon's operation notes" for Daniel Cooney, please be advised that our clients have confirmed for me that no such documents exist.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,



PAUL E. PEEL

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 03-2652

**ELEANOR M. COONEY, As Executrix of the
Estate of Daniel T. Cooney, Jr., Deceased;
ELEANOR M. COONEY; ELEANOR SCHIANO;
HELEN E. COONEY MUELLER; DANIEL T. COONEY, III;
ROBERT COONEY INDIVIDUALLY,**

Appellants

v.

**ROBERT E. BOOTH, JR.; ARTHUR R. BARTOLOZZI;
DAVID MCHUGH, (FICTITIOUS FIRST NAME); DAVID G. NAZARIAN;
JOHN DOE, (FICTITIOUS NAME); BOOTH, BARTOLOZZI, PENN ORTHOPEDICS;
MARK MANTELL; RECOVERY ROOM STAFF;
JANE DOE, JOHN ROE, ET AL, (FICTITIOUS NAMES);
GRADUATE HOSPITAL, (FORMERLY ALLEGHENY GRADUATE HOSPITAL);
PENNSYLVANIA HOSPITAL; ROBERT E. BOOTH, JR.; MARK MANTELL,
PERSONALLY;
BOOTH, BARTOLOZZI, BALDERSON, PENN ORTHOPEDICS, CORPORATION;
DENNIS MCHUGH**

**On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 00-cv-01124)
District Judge: Honorable Eduardo C. Robreno**

**Submitted Under Third Circuit LAR 34.1(a)
March 22, 2004**

Before: ROTH, AMBRO AND CHERTOFF, CIRCUIT JUDGES

(Filed: September 7, 2004)

OPINION

ROTH, Circuit Judge

Appellants appeal from the January 31, 2003, order of the District Court denying their Rule 60 (b) motion, the May 13, 2003, order denying their recusal motion, and the June 5, 2003, order denying their motion to reconsider the January 31, 2003, order. For the reasons that follow, we will affirm.

The background and factual allegations underlying this cause of action are well known by the parties and need not be detailed here. Briefly, appellants' decedent, Daniel T. Cooney, Jr., consented to have Dr. Robert Booth perform knee replacement surgery. Dr. Arthur Bartolozzi assisted Dr. Booth. After the surgery, Cooney's foot became discolored and no pulses were palpable. Corrective vascular surgery was performed. Cooney died as a result of secondary complications from the vascular surgery.

Cooney's estate and individual family members (appellants in this case) filed suit against the doctors involved and a number of other medical personnel and entities. On March 8, 2001, the District Court granted summary judgment in favor of Dr. Bartolozzi.¹ Appellants then voluntarily dismissed all remaining defendants except Dr. Booth. On

¹ The same order also granted summary judgment in favor of defendant Nazarian.

March 22, 2001, a jury returned a verdict in favor of Dr. Booth. We affirmed.

In June 2002, appellants filed a Rule 60 (b) motion to set aside the order granting summary judgment in favor of Dr. Bartolozzi and the jury verdict in favor of Dr. Booth. In the motion, appellants asserted that the judgments should be set side because Dr. Booth and Dr. Bartolozzi committed fraud upon the court. The basis for the assertion of fraud was, inter alia, that appellants recently discovered that Dr. Booth's trial testimony conflicted with Dr. Bartolozzi's deposition testimony on the issue of whether Dr. Booth performed the critical aspects of Cooney's surgery. The District Court denied the motion, reasoning that it was untimely filed more than one year after the entry of the judgments, and that, even assuming that the motion was timely, it lacked merit.

Appellants subsequently filed a motion for reconsideration of the order denying their Rule 60 (b) motion along with a motion for recusal requesting that the District Judge recuse himself and vacate the order denying the Rule 60 (b) motion. The District Court denied the recusal motion by order entered May 13, 2003, and denied the reconsideration motion by order entered June 5, 2003. This appeal followed.

The District Court properly denied appellants' motions. We agree with the District Court that the Rule 60 (b) motion was untimely, see Fed. R. Civ. P. 60 (b), except for the allegation of fraud against the court, which we find to be without merit.

Despite appellants' assertions, Rule 60 does not provide a good cause exception for untimely filings and, even if it did, appellants' assertions fail to show good cause.

With respect to the order denying appellants' recusal motion, the District Court did not abuse its discretion in denying the motion. See Jones v. Pittsburgh Nat'l. Corp., 899 F.2d 1350, 1356 (3d Cir. 1990). Simply put, we find nothing in the record that suggests personal bias or prejudice by the District Court that would preclude fair judgment. See 28 U.S.C. § 144; U.S. v. Furst, 886 F.2d 558, 582 (3d Cir. 1989). Nor do we perceive any facts from which a reasonable person would conclude that the impartiality of the District Court might reasonably be questioned. See 28 U.S.C. § 455(a); Edelstein v. Wilentz, 812 F.2d 128 (3d Cir. 1987). To the extent that appellants challenged the District Judge's handling of certain motions, appellants should have pursued their concerns on direct appeal from the final order. Unfavorable rulings do not form an adequate basis for recusal. See SecuraComm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

The District Court likewise did not abuse its discretion in denying appellants' reconsideration motion. Appellants failed to show an intervening change in controlling law, new evidence, clear error of law or fact, or manifest injustice. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Consequently, their motion was properly denied.

We have considered all of appellants' arguments and find them unpersuasive. Accordingly, we will affirm the orders of the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELEANOR M. COONEY, AS
EXECUTRIX OF THE ESTATE OF
DANIEL T. COONEY, JR.,
DECEASED, et al.,

Plaintiff,

v.

ROBERT E. BOOTH, JR., MD.,
et al.,

Defendants.

CIVIL ACTION
NO. 00-1124

FILED JAN 30 2003

ORDER

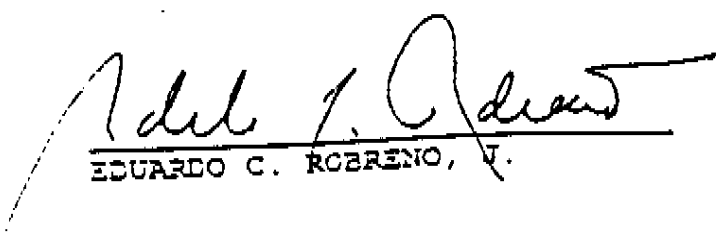
AND NOW, this 30th day of January, 2003, upon consideration of the motion of plaintiff Eleanor Cooney et al. to set aside judgment et seq. (doc. no. 110), the response of defendant Robert E. Booth, Jr., et al. (doc. no. 112), the memorandum of law by plaintiff Cooney et al. (doc. no. 116), the response by defendant Booth et al. (doc no 117), and the reply memorandum of plaintiff Cooney et al. (doc. no. 119), and after a hearing, it is hereby ORDERED that the motion is DENIED.¹

¹ First, the motion to set aside the judgment is untimely. Under Rule 60(b)(3), a motion to set aside the judgment on the basis of fraud shall be filed within one year of the entry of the judgment. Fed. R. Civ. P. 60(b)(3). It is undisputed that the instant motion was filed more than one year from the entry of judgment. Nor is petitioner entitled to proceed under subsections (2) or (6) in that the basis for the allegations in the motion, i.e., the conflict between the testimony of Dr. Booth at trial and Dr. Bartolozzi at deposition, was either known or should have been known to petitioner, since petitioner had a transcript of Dr. Bartolozzi's deposition at the time of trial. See Fed. R. Civ. P. 60(b)(2) (newly discovered evidence previously undiscoverable by due diligence); Fed. R.

ENTERED
JAN 31 2003
CLERK OF COURT

Exhibit "E"

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

Civ. P. 60(b)(6) (any other reason justifying relief).
Second, assuming that the motion is timely, it fails because petitioner cannot show the existence of fraud on the court, or the commission of perjury by Dr. Booth. The gist of petitioner's claim is that Dr. Booth's trial testimony is in conflict with Dr. Bartolozzi's deposition testimony on the issue of whether Dr. Booth performed the critical aspects of Mr. Cooney's surgery. Assuming that this is so, an inconsistency between the testimony of two witnesses does not amount to fraud and is not proof of perjury. See Kutznar v. Johnson, 242 F.3d 605, 609 (5th Cir. 2001) ("Conflicting or inconsistent testimony is insufficient to establish perjury."); Becker v. Gress, Nos. 92-36681, 93-35291, 1994 WL 142968, at **2 (9th Cir. Apr. 20, 1994) ("Inconsistent testimony by a witness is not the type of fraud upon the court that could reopen a judgment."). Moreover, as stated above, at the time of trial, petitioner and trial counsel had in their possession Dr. Bartolozzi's deposition testimony. Yet, petitioner and counsel, for reasons of trial strategy or as a result of counsel's error, forwent the opportunity either to confront Dr. Booth on this point while on the stand, or to call Dr. Bartolozzi as a trial witness (who was located within the subpoena power of the court). Having forgone the opportunity at trial to place at issue Dr. Booth's contention that Dr. Bartolozzi was involved in critical aspects of Mr. Cooney's surgery, petitioner may not now collaterally impeach the jury's verdict.

Finally, petitioner raises serious issues concerning Dr. Booth's professional conduct in other matters unrelated to the treatment of Mr. Cooney. The court by this decision offers no views on whether Dr. Booth's conduct, as alleged, may have run afoul of federal or state law, or any professional standards applicable to him. These judgments are to be made, if at all, by appropriate authorities in other forums.

Upon review of the record, the court is left with the firm impression that petitioner received a fair and full hearing of her claims in this case at trial and on appeal.

GRADUATE

PHILADELPHIA, PA 19146

OPERATING ROOM

INTRAOPERATIVE RECORD

ADDRESSOGRAPH

DATE 02-26-98 ROOM NUMBER 77
 IN ROOM 1426 PROCEDURE START TIME 1511
 OUT OF ROOM 1647 PROCEDURE END TIME 1604
 SURGEON: (A. Balthazar MD) 1ST ASSIST: D. McHugh 2ND ASSIST: E
 SURGEON: J. Balthazar MD PA: E OTHER: D. Holmes O.T.
 ANESTHESIOLOGIST: T. Williams CRNA: D. Schmecker RESIDENT:
 ANESTHETIC: ☐ GENERAL ☐ MAC ☒ REGIONAL ☐ LOCAL
 LOCAL AGENT: E AMOUNT: E cc. LOCAL AGENT: E AMOUNT: E cc.
 SCRUB NURSE: M. Prus Krusica RN CIRCULATING NURSE: R. Dennis RN
 SCRUB RELIEF: L. Tothman S.T. 1530 CIRCULATING RELIEF: D. Wicks RN 1530
 SCRUB RELIEF: CIRCULATING RELIEF:
 PRE-OPERATIVE DIAGNOSIS: DJD. Plume
 POST-OPERATIVE DIAGNOSIS: Plume
 WOUND CLASSIFICATION (Check One Only): ☒ CLEAN I ☐ CLEAN/CONTAMINATED II
☐ CONTAMINATED III ☐ DIRTY IV
 PROCEDURE #1 Q T.K.A.
 PROCEDURE #2 Proximal catheter insertion - deactivation pincher
 PROCEDURE #3
 PROCEDURE #4
 VOLUME LOSS: cc.
 SPECIMENS: Contents Plume

CULTURES/CYTOLOGY E

IMPLANTS: ☐ N/A ☒ INSERTION ☐ REMOVAL ☒ CEMENT ☒ CARD FILED ☐ AUTOCLAVE # LOAD #
 TYPE MANUFACTURER SITE SIZE LOT/SERIAL # CAT/MODEL # EXP. DATE

Cement	Soumedica	Plume	40x2	RL1558	6191-1-001	9/2000
Amoral	Amoral		59	54415800	5220-02	
Prox			59	54859200	5220-02	
Polly			59x12	40655900	5220-02-03	
Patella			32	14880600	5220-17	

SERVICE:

COUNTS:

PLA	ORT
GYN	GEN VAS
DEN	URO
CT	COS
OPT	POD
NEU	ENT

SHARPS:

☒ CORRECT ☐ INCORRECTSPONGES: ☐ N/A ☒ CORRECT ☐ INCORRECTINSTRUMENTS: ☒ N/A ☐ CORRECT ☐ INCORRECT

IF CORRECT, WAS X-RAY TAKEN:

☐ YES ☒ NORESULT: ELASER: ☐ YES ☒ NOTYPE: ☐ CO₂ ☐ YAG ☐ KTPLASER NURSE: EMINUTES: EENERGY: E

LASER SAFETY PROTOCOL FOLLOWED

☐ YES ☒ NO IF NO EXPLAIN: E

- #Achment "6"

"Exhibit F"

SAFETY STRAP SECURED LOCATION: Chair

COMMENT:

BODY POSITION: ☐ JACK KNIFE ☐ LATERAL ☐ RIGHT ☐ LEFT ☐ GEORGIA PRONE ☐ LITHOTOMY ☐ PRONE ☒ SUPINE
☐ SEMI-FOWLERS ☐ SEMILATERAL ☐ RIGHT ☐ LEFT ☐ OTHER:

POSITIONING DEVICES: ☐ ALLEN STIRRUPS ☐ LATERAL SUPPORT ☐ KAMBIN'S FRAME ☐ PILLOWS
☐ WILSON FRAME ☒ CANDY CANE STIRRUPS ☐ KIDNEY REST ☐ TRENT ANDREWS FRAME ☐ VAC PAC
☐ MAYFIELD FRAME ☐ SHOULDER SUSPENSION ☐ LEG REST PILLOW ☐ BUMP WHERE:
☒ OTHER: Foot rest

ARM POSITION: ☒ RIGHT ☐ ARMBOARD ☐ AT SIDE ☐ FOAM ARM REST ☐ OTHER:
☒ LEFT ☐ ARMBOARD ☐ AT SIDE ☐ FOAM ARM REST ☐ OTHER:

EQUIPMENT USED: ☐ N/A ☐ NEUROSTAT ☐ BLANKETROL # ☐ °C ☐ INSUFFLATOR
☐ CUSA min ☐ ORTHO PUMP ☐ PHACO ☐ SLUSH MACHINE ☐ CYSTO EQUIP.
☐ MICROSCOPE ☐ PORTABLE X-RAY ☐ C-ARM ☐ LAPROSCOPIC EQUIPMENT ☐ DEFIBRILLATOR
☐ ANGIOSCOPE ☐ ARTHROSCOP. EQUIP. ☐ FX TABLE ☐ ANTIEMBOLIC PUMP ☐ STERIS #
☐ CAVITRON ☐ FLASH AUTOCLAVE # ☒ OTHER: Booth Power

☐ TOURNIQUET:
☐ PLACEMENT: R/t Thigh APPLIED BY: Meluch DO MACHINE #: Hydrex 39017
☐ TIME UP: 1570 TIME DOWN: 1604 PRESSURE: 400 mmHg
☐ TIME UP: TIME DOWN: PRESSURE:

☐ ELECTROSURGICAL:
☐ BIPOLAR ☒ MONOPOLAR ESU # 20A1302M BIPOLAR #: ABC #:
☒ PLATE 30 PLACEMENT R thigh LOT # AE EXPIRATION DATE: 800012
☐ SETTINGS: COAG: 75 CUTTING: 125 SKIN CONDITION AFTER REMOVAL:
 OTHER:

CR RN

GENERAL SKIN CONDITION:

PRE-OP: Spotted on face - various areas of body - Numb, red, brown
 POST-OP: same

SHAVE/PREP: ☐ NO ☒ YES
 AREA: W leg
 SOLUTION: Wet prep

SURGICAL SITE PREPPED: ☐ NO ☒ YES
 AREA: W leg
 SOLUTION: Betadine / alcohol

MEDICATIONS: (DOSE/ROUTE/TIME/ADMINISTERED BY)

MEDICATED IRRIGANT: X2 Sagent / 0000 bacitracin IN 1000 CC OF NS

DRAINS: ☐ NO ☒ YES - TYPE: percutaneous LOCATION: flank
 TYPE: LOCATION:

FOLEY CATHETER: ☐ NO ☒ YES 16 FR. 10 CC BALLOON. INSERTED BY: NAT Anesthet

PACKING: ☐ NO ☒ YES - TYPE: LOCATION:

DRESSING: Adaptic 4x4 - 4x4 ☐ CAST - TYPE:

NT TO: ☐ PACU ☐ ICU ☐ ROOM ☐ OTHER: VIA ☐ BED ☐ STRETCHER ☐ AMBULATING

NURSES NOTES: Planned CUSA kidney warm blanket applied. Considered
for placement to unit for urology. PT is alert and oriented. R. N. N. N.
Report DOC request duodenal stent applied to C. N. N. N.

SIGNATURE

INITIALS

SIGNATURE

Rita Dennis RN NOR

OPERATIVE VISIT / EVALUATION:



ALLEGHENY UNIVERSITY HOSPITALS GRADUATE

OPERATIVE REPORT

One Graduate Plaza
1300 Lemoore Street
Philadelphia, PA 19146
215.393.2000

PATIENT: COONEY, DANIEL
HISTORY NUMBER: 782873
SURGEON: DRS. BARTOLOZZI/BOOTH
ASSISTANTS:

DATE: 02/26/98

ANESTHESIA: SPINAL EPIDURAL
ANESTHETIST:

PREOPERATIVE DIAGNOSIS: Degenerative joint disease of left knee

POSTOPERATIVE DIAGNOSIS: Same

PROCEDURE: Left total knee arthroplasty

ESTIMATED BLOOD LOSS: 50 cc

TOURNIQUET TIME: 45 minutes

OPERATIVE PROCEDURE: The patient was taken to the operating room and placed in the supine position after the adequate administration of anesthesia. The left knee was prepped and draped in the usual sterile fashion. The extremity was exsanguinated with an Esmarch bandage and the tourniquet was inflated.

A longitudinal midline incision and medial parapatellar arthrotomy were performed. The patella was everted laterally and advanced degenerative changes were seen. The cruciate ligaments were excised and soft tissue releases were performed to restore alignment of the limb. The tibia was subluxed anteriorly and a transverse tibial cut was performed. The tibia was provisionally sized for a 59 Zimmer Insall-Burstein II component. The femoral AP cut was then performed and a 59 x 12 mm block provided excellent stability in flexion. The distal femoral cut was performed with the assistance of a soft tissue tensor and a 59 x 12 mm block provided excellent stability in extension.

The chamfer cuts were performed and a provisional 59 femoral, 59 tibial, 59 x 12 mm tibial spacer, and 32 mm tripegged domical patellar button was placed. The knee was taken through a full range of motion with excellent alignment, stability and patellofemoral tracking. The provisional components were removed and the bone surfaces were further prepared with burrs and pulsatile cleansing. Pressurized cement was used to sequentially secure the femur, tibia, and patella. The knee was placed in full extension, the excess cement was removed and allowed to harden. The knee was reirrigated and closed sequentially over double drains using #1 vicryl capsular sutures, #2-0 vicryl subcutaneous sutures and skin staples. Sterile compression dressings were applied and the tourniquet was released.

The attending physician was present for the key portion of the

COONEY, DANIEL

-2-

782873

procedure including the soft tissue balancing, bone preparation, and prosthesis implantation and was immediately available throughout the entire procedure. The patient tolerated the procedure well and left the operating room in excellent condition.

/TL132/1921

DD:02/26/98

DT:02/27/98



DRS. BARTOLOZZI/BOOTH



BOOTH BARTOLOZZI
BALDERSTON

Robert E. Booth, Jr., M.D.
Arthur R. Bartolozzi, M.D.
Richard A. Balderston, M.D.
Peter F. DeLuca, M.D.
Philip M. Maurer, M.D.
David G. Nazarian, M.D.



ALLEGHENY
UNIVERSITY HOSPITALS
GRADUATE

THE ORTHOPAEDIC HOSPITAL
Allegheny University Hospitals
Graduate

1500 Lombard Street
Philadelphia, PA 19143
215-393-1332
833-673-4332
215-393-6771 Fax
www.33Ortho.com

REQUEST FOR MEDICAL AND SURGICAL PROCEDURES

TOTAL JOINT REPLACEMENT CONSENT FORM

PATIENT: Daniel Cooney AGE: 80 DATE: 2/12/98 TIME: AM/PM

1) I hereby request and authorize Dr. Booth/Bartolozzi/DeLuca/Nazarian and/or Associates and Assistants to perform upon me (or upon the above named patient), the following operation and/or medical procedures: (List specific nature of operation and procedures to be performed.)

Left total Knee Arthroplasty

2) I am aware that the practice of medicine and surgery is not an exact science and results cannot always be anticipated. I acknowledge that no guarantee or assurance has been given to me by anyone as to the results that may be obtained in the operation to be performed upon me and of any medical, surgical or therapeutic procedures in Allegheny University Hospitals, Graduate. I understand that complete restoration of function may not be achieved as a result of this operation or procedure.

3) The nature and purpose of this operation, possible alternative methods of treatment, the risks involved in the surgery and in the administration of anesthesia and the possibility of complications have been fully explained to me and I completely understand them. The significant risks and complications explained to me and which are involved in this procedure include, but are not limited to the following: INFECTION, PHLEBITIS, THROMBOEMBOLISM, SWELLING, DELAYED HEALING, ANESTHESIA RISKS PER ANESTHESIA, CARDIAC EVENT, STROKE, PERSISTENT PAIN, STIFFNESS, INSTABILITY, FRACTURE, NERVE INJURY, NUMBNESS, PARALYSIS, VASCULAR INJURY, BLEEDING, RECURRENCE OF DEFORMITY, LEG LENGTH INEQUALITY, WEAR, LOOSENING, DISLOCATION, AND DEATH.

4) I request the performance of operations and procedures in addition to or different from those now contemplated, whether or not arising from presently unforeseen conditions, which the above named doctor or his associates or assistants may consider necessary or advisable in the course of the operation.

5) I request the administration of such anesthetics as may be considered necessary or advisable by the physician responsible for this service.

1 A. There was a -- according to the record.
 2 there was injury to the intimal lining of the --
 3 or an abnormality essentially in the intimal
 4 lining of the artery.
 5 Q. And do you know how that came about?
 6 A. No.
 7 Q. Did you review also any of the records with
 8 respect to the vascular surgery that was
 9 performed on Mr. Cooney in February '98?
 10 A. Yes.
 11 Q. Did you review the operative report of the
 12 vascular surgery from Dr. Mantell?
 13 A. Yes.
 14 Q. Okay. You said you did not review the
 15 arteriograms, the intraoperative arteriograms or
 16 the presurgery arteriograms?
 17 A. I did not.
 18 Q. Okay. Did you, prior to Mr. Cooney's
 19 orthopaedic surgery, the knee replacement, did
 20 you see Mr. Cooney in your office before surgery?
 21 A. I did not.
 22 Q. Okay. Who was the physician in your office
 23 who saw -- who saw Mr. Cooney before surgery?
 24 A. He had seen both Dr. Booth and
 25 Dr. Nazarian.

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1 Q. Okay. Was he seeing Dr. Nazarian for the
 2 anticipated knee replacement, do you know?
 3 A. He had been treated by Dr. Nazarian for
 4 another problem.
 5 Q. Do you know what that problem was?
 6 A. Yes. He had a hip revision surgery.
 7 Q. Okay. And Dr. Nazarian was the surgeon in
 8 that surgery?
 9 A. As far as I know.
 10 Q. Okay. Who was he seeing in your office
 11 with respect to the anticipated knee replacement
 12 or knee surgery?
 13 A. I believe he seen Dr. Booth for that.
 14 Q. Okay. But you didn't participate in any of
 15 the examinations or treatment with respect to the
 16 knee surgery?
 17 A. No.
 18 Q. When was the first time that you saw
 19 Mr. Cooney?
 20 A. The first time I encountered him was in the
 21 operating area in Graduate Hospital.
 22 Q. Okay. Before surgery, before his knee
 23 replacement surgery?
 24 A. Yes.
 25 Q. Okay. Who was the surgeon for Mr. Cooney

for the replacement?

MR. O'BRIEN: Objection to the form.

THE WITNESS: Well, we operate as a
 team with respect to the surgery. The procedure
 involves a number of steps that are well
 rehearsed and as part of the process, as a team,
 we work together and take care of the patients.
 The attending physician for Mr. Cooney was
 Dr. Booth.

BY MR. KLEPP:

Q. What does it mean to be an attending
 physician?

A. He primarily evaluated the patient ahead of
 time, met with him, discussed the procedures and
 is the attending with respect to that surgical
 procedure.

Q. Is he, I think as Dr. Booth described, the
 choreographer of the treatment in the surgical
 procedure?

MR. O'BRIEN: Objection to the form.

THE WITNESS: Well, I don't know the
 term "choreographer." We -- he is responsible for
 certain aspects of the surgical procedure and we,
 as a team, work together in concert to help
 provide the patient with the best, you know, care

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possible and each of us has different experiences
 and expertise.
 BY MR. KLEPP:
 Q. Who would be the one ultimately responsible
 for any decisions that would be made with respect
 to the surgery of Mr. Cooney?

MR. O'BRIEN: At what point?

MR. KLEPP: During the procedure of
 the surgery.

MR. O'BRIEN: Just at any time during
 the surgery?

BY MR. KLEPP:

Q. Any time a decision has to be made with
 respect to the surgery, who is the ultimate
 responsible individual?

A. Dr. Booth is the -- anything that's out of
 the ordinary or would require a decision such as
 that would be Dr. Booth's decision.

Q. What parts of the surgery did you
 participate in Mr. Cooney's surgery?

A. The initial part of the surgery involves
 applying the drapes and the surgery involves a
 applying the drapes, establishing the surgical
 field, making an exposure to the knee, beginning
 the initial phases of the knee replacement,

COONEY VS. BOOTH, ET AL

Condenselt™

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1 removing bony osteophytes and preparing the bones
2 themselves for the actual replacement procedure.

3 Q. That's the part that you participated in?

4 A. Yes.

5 Q. All right. Did anyone assist you or -- did
6 anyone assist you in performing those roles?

7 A. In this particular case, there was a --
8 typically, in this case, we had a resident who
9 was Dr. McHugh and there was a surgical assistant
10 as well who provides some assistance, a surgical
11 assistant or physician or a nurse.

12 Q. A doctor?

13 A. No.

14 Q. It's termed surgical assistant?

15 A. Yes.

16 Q. Who was the surgical assistant involved in
17 this case, if you know?

18 A. I don't recall.

19 Q. Is it in the operative report?

20 A. It may be.

21 MR. O'BRIEN: If you're looking for
22 the name, it's written somewhere. It's in the --
23 I believe it would be --

24 BY MR. KLEPP:

25 Q. Would it be -- I'm going to show you the

1 A. No.

2 Q. On the operative record on the line at the

3 top where "surgeon" is printed, both you and

4 Dr. Booth are listed as the surgeon; is that

5 correct?

6 A. Correct.

7 Q. Do you know why you and Dr. Booth are

8 listed as the surgeon on that record?

9 A. We were both involved in the surgery.

10 Q. Okay. Now, other than the procedure that

11 you've just described that you were involved in

12 with respect to Mr. Cooney's operation, were you

13 involved in any other part of Mr. Cooney's

14 operation?

15 A. I was involved at the end of the procedure

16 with the -- with the -- at the end of the

17 cementation or the part -- cementing of the

18 parts. The exposure and the area is irrigated

19 with an antibiotic liquid and then the wound is

20 closed. The deep issues are closed and then the

21 skin is closed and then staples are applied.

22 Q. And were you involved in that procedure?

23 A. Yes.

24 Q. Was Dr. Booth involved in the operation?

25 A. His involvement is in soft issue, ligament

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Page 20

1 intraoperative record. Is it reflected anywhere
2 on the intraoperative record?

3 A. Yes.

4 Q. And who is it?

5 A. D. Holmes.

6 Q. Okay. Thank you. Now, since we have the
7 operative record out, on the operative record,
8 also you're listed as the surgeon for Mr. Cooney.
9 do you see that, and there is another doctor
10 that's listed as the surgeon?

11 A. Yes.

12 Q. Who is the other doctor listed as the
13 surgeon?

14 A. Dr. McHugh.

15 Q. And then below your name, there's another
16 person listed as the surgeon.

17 A. I can't read the name, but it's --

18 Q. You can't read the name?

19 A. I'm not familiar with that.

20 Q. Okay. And, in effect, where you said
21 McHugh, is Dr. McHugh listed as first assistant?

22 A. Yes.

23 Q. Okay. Do you know why you were listed as
24 surgeon along with the other physician whose name
25 you cannot decipher?

1 balancing, participating with the bony cuts,
2 application of trial prosthetic devices that are
3 the size of the devices that we'll ultimately use
4 and once the parts are applied and cemented,
5 he's -- that's the limit of his involvement.

6 Q. During any of your involvement in the
7 surgery, did you come in contact with the
8 popliteal artery of Mr. Cooney?

9 A. No, it's well out of the way of the field
10 and it's not a structure that we see or expose.

11 Q. Is there any risk in a knee replacement
12 surgery such as Mr. Cooney's to injure the
13 popliteal artery?

14 A. Yes.

15 Q. And what's the risk?

16 A. There are risks of vascular injury with
17 knee surgery. Vascular -- there is known
18 vascular complication or vascular injury that can
19 occur.

20 Q. What types of injury can occur?

21 A. Arterial lacerations can occur, dislodgment
22 of plaque lodged in an artery, a clot, thrombus
23 can occur.

24 Q. What's arterial laceration?

25 A. It's where an artery is lacerated.

18

Dr. Booth - Cross

33

1 Q So you knew about it even as of the time of surgery?

2 A Yes.

3 (Pause.)

4 Q Now, on February 26th you went forward with the surgery
5 on Mr. Cooney; isn't that right?

6 A Yes.

7 Q Let's talk about the surgery. Do you recall, sir, back
8 on April 28th, 1997, your meeting with Mr. Cooney, do you
9 recall him asking you words to the effect, Will you --
10 meaning you Dr. Booth you -- perform or do the knee
11 replacement surgery on me? Do you recall him saying words to
12 that effect to you?

13 A He asked if we would do -- I would do a knee replacement
14 on him, yes.

15 Q If you would?

16 A Yes.

17 Q And he had only met with you as of that moment?

18 A Correct.

19 Q And do you recall telling him words to the effect, Yes,
20 young man, I will do the surgery for you or on you?

21 A Yes.

22 Q So you promised him then that you would do the knee
23 replacement surgery, didn't you?

24 A I told him that I would do --

25 Q Did you promise him then that you would do the knee

Attachment 7 "2"

19

Dr. Booth - Cross

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1 replacement? You understand the word "promise"?

2 A Yes, I do.

3 Q Did you promise him, at that time, that you would do the
4 knee replacement surgery?

5 A Yes.

6 Q You didn't tell him, at that time, anything about there
7 being a team approach to this, that I with other people are
8 going to be doing this on you and for you, did you?

9 A Yes, I did, that's absolutely incorrect.

10 Q You have a recollection of that?

11 A It is only a recollection because that is what I tell
12 everybody that I see. And I explained to you in direct
13 testimony exactly what it is I tell people.

14 Q Now, Mr. Cooney was there for your personally to perform
15 that surgery, and he asked you whether you personally would
16 perform that surgery; is that --

17 A He did not ask if I'd personally would perform the
18 surgery. He asked if I would do his knee surgery and I said
19 yes.

20 Q You don't understand that to be requesting that you do it
21 personally?

22 A Nobody can do the operation by themselves, that is --
23 it's an inappropriate question -- and what I tell them, as
24 part of their informed consent, is that we work as a team,
25 there will be several doctors, my partners as well as

Booth - Direct

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1 Art Bartolozzi is my sports partner, but he's very
2 good with soft tissues, and ligaments, and he takes care of
3 the pro teams. There are a couple of the pro teams here in
4 Philadelphia, and he's very good, and he's taught me a lot
5 about soft tissue balancing.

6 The second level is that we teach fellows and
7 residents, so they're working and they're doing parts of this
8 surgery as well, we're a teaching hospital. And so they need
9 to hear that, and that's all written on the consent forms as
10 well, but, you know, that's part of the way we work, and it's
11 one group that -- that covers the surgery and the after-care
12 together.

13 Q Now, is Dr. Bartolozzi, the name that you mentioned, he
14 was one of the surgeons in the operating room with you and
15 Mr. Cooney?

16 A Yes.

17 Q Is he the team orthopedic physician for the Philadelphia
18 Eagles and the Philadelphia Flyers, both?

19 A The Eagles, the Flyers, the Phantoms, the Kicks, he's
20 overcommitted to sports.

21 Q Okay. To the best of your recollection, when Mr. Cooney
22 and his daughter left on that April visit, were there any
23 questions, do you know, posed to you that went unanswered in
24 any way, shape, or form?

25 A No, I think the only thing I didn't mention is we do say

Booth - Direct

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1 "I hereby" -- which has your name written in -- "I hereby
2 request and authorize Dr." -- and it's not filled in. It
3 says Booth, Bartolozzi, DeLuca, Nazarian.

4 Given that this is a total joint replacement consent
5 form, why is it that unlike the hip form over here, where
6 you're named on them, why is it not on this -- on this -- in
7 this case?

8 A On the hip, what I was trying to take advantage of was
9 Dave Nazarian's specific expertise in doing these hip
10 conversions. As I said, this is not a primary hip, this is a
11 conversion from a hip fracture, which is a slightly different
12 and more complicated operation, which he likes to do and does
13 very well.

14 The knee is something that we do interchangeably,
15 really three of us. Dr. DeLuca really only does -- rarely
16 does total knees, but Dr. Bartolozzi, Dr. Nazarian, and I do
17 the total knees at our institution and we assist each other,
18 do them together, we work in this team fashion that I've
19 tried to explain earlier.

20 So what I want the patients to know, and what they
21 are, indeed, told is that we work as a team. This is the
22 attending physicians, this is the staff doctors, this is not
23 the residents and fellows, this is my partners. And that's
24 what this reflects (indicating).

25 Q And do we know who started the procedure, who initiated

Booth - Direct

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1 the surgical procedure on Mr. Cooney for this left total knee
2 arthroplasty?

3 A Yes, Dr. Bartolozzi.

4 Q Okay. And was he assisted by anyone?

5 A At the beginning by Dr. McHugh, who was a resident from
6 the Allegheny System -- the former Allegheny System.

7 Q Okay. And is there an operative note dictated pursuant
8 to this surgery -- strike that.

9 Is there an operative note dictated after the
10 surgery that was done on Mr. Cooney that day?

11 A Subsequent to it, yes.

12 Q Let me ask you why you, or Dr. Bartolozzi, or Dr. McHugh,
13 did this procedure on a man that is alleged to have
14 peripheral vascular disease sufficiently, allegedly, to
15 warrant an arteriogram or some type of study before the
16 surgery, coupled with an ulcer on the heel, what was it that
17 you found, in treating your patient, that makes you disagree
18 with the contentions that Mr. Klepp's witness was to put
19 forth?

20 A That's a big question, so let me take it systematically.

21 Mr. Cooney -- and I'd like -- and there's been a lot
22 of talk for several days -- I personally believe Mr. Cooney
23 had peripheral vascular disease. I believe that I have it,
24 Dr. Kendrick said you had it, probably all but two or three
25 people on this panel have it by virtue of age. We change as

Booth - Direct

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1 basically a knee replacement. It's a little more
2 complicated than that, but that's essentially --

3 Q Now, given your training and -- incidentally, do you
4 teach surgeons this technique of knee replacement?

5 A Yes.

6 Q And do you write specifically on the -- when I say
7 "write," I mean do you write medically-recognized literature,
8 journals and the like on this specific procedure of knee
9 replacement?

10 A Yes.

11 Q In Mr. Cooney's surgery, what portion of Mr. Cooney's
12 knee surgery involved that procedure, which you've just
13 described for us?

14 A That was what we did to Mr. Cooney.

15 Q All right. And how long does that take -- well,
16 generally speaking, how long did it take, if you know from
17 the records, with respect to Mr. Cooney for you to do that
18 which you just described for us in a couple of minutes?

19 A That was about 45, 50 minutes.

20 Q When you said that Dr. Bartolozzi, you told us earlier,
21 deals with soft tissue, what does that mean?

22 A We sort of, among ourselves, surgeons among ourselves,
23 not my partners, distinguish between hard tissue and bone and
24 soft tissue which is the ligaments. Repairing the cruciate
25 ligaments and other ligaments around the knee is -- is a

Booth - Direct

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1 different art. I don't -- I used to do that years ago, but I
2 don't do that too much anymore. I'm more into the hard
3 tissue, the parts, the bones, et cetera. But we learn from
4 each other. We're not just teaching residents and other
5 doctors, and we actually design these operations for the
6 companies that sells these things around the world, but we
7 learn for ourselves, and so that's Dr. Bartolozzi's gift to
8 me over the years has been a better understanding of
9 balancing the soft tissues.

10 A lot of people when they do knees, especially in
11 this community, put them in and all they care about is
12 getting the parts on the bone correctly, but you can have the
13 parts on the bone and have a knee that's wobbly or giving out
14 because the ligaments aren't balanced properly. So the best
15 total knees are those which not only have the parts properly
16 aligned on the bones, but also restore the soft tissue
17 balance, because as I said, the soft tissues, the ligaments,
18 tendons, and muscles, are what hold it all together and make
19 it move. And if that's not good, then even the most
20 attractive X-ray won't work as a -- as a proper knee.

21 Q And I believe you said that Dr. Bartolozzi is involved in
22 sports medicine?

23 A Yes.

24 Q And deals with more of the tendons and that than you do?

25 A Yes.